Supreme Court, U.S.
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No.

In The
SUPREME COURT OF THE UNITED STATES

WILLIAM ALLEN ARNOLD,
Defendant-Appellant-Petitioner

v.

UNITED STATES OF AMERICA,
Plaintiff-Appellee-Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI (REVOCATION OF SUPERVISION)

WILLIAM ALLEN ARNOLD
C/O 4342 FORREST ROAD
COLUMBUS, GEORGIA [31907]

Questions Presented

Subject Matter Jurisdiction—Case or Controversy

1. Since Arnold has been completely released, is there still a case or controversy?

Subject Matter Jurisdiction—Geography

2. May a federal trial judge assigned to one District animate a different District for any purpose?

   (May SCHLESINGER, assigned to M.D. Fla., animate M.D. Ga. to order Arnold's arrest?)

   (Does SCHLESINGER, assigned to M.D. Fla., have M.D. Ga. signature authority?)

§ 455(a) Recusal, *Liljeberg*

3. Where SCHLESINGER is a conspirator in the retaliatory criminal Record-tampering, should he have self-recused?

Statutory Challenge

4. Does the supervised release system violate Separation of Powers?

Due Process—*Ex parte* arrest without evidence

5. May a person be ordered arrested not only without evidence, but also, in a civil proceeding alleging mere breach, without Notice or Opportunity to be heard?

Parties

The court of appeals judgment sought to be reviewed is the one issued on appeal of revocation of supervision, and the parties to the appellate proceeding are as follows:

Case No. 04-16353

UNITED STATES OF AMERICA

[PAUL I. PEREZ, U.S. Attorney]
[TAMRA PHIPPS, AUSA, Chief, Appellate Section]
[SUSAN HUMES RAAB (sole signatory)]

WILLIAM ALLEN ARNOLD
c/o 4342 Forrest Road
Columbus, Georgia [31907]

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Appendix A (with separate Table of Contents)

Citations to decisions below

None

Jurisdiction

(i) Date Judgment Was Entered
28 November 2005 [+90: Sunday, 26 February 2006]

(ii) Rehearing, Extension None.

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
Review by certiorari of decision by court of appeals, 28 U.S.C. §§ 1254(1), 2101(c).

(v) Regarding notice of statutory challenge, Rule 29.4(b)
28 U.S.C. § 2403(a) may apply. The initial filing here is served on the Solicitor General. The statutory challenge was raised on appeal.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Key Statutory Language (Questions 4 and 5)

Title 18

Section 3583—Inclusion of a term of supervised release after imprisonment.

(e) Modification of Conditions or Revocation. - ***The court may***, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) –

(3) revoke a term of supervised release, and ***require the defendant to serve in prison all or part of the term of supervised release*** authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, ***if the court***, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, ***finds by a preponderance of the evidence that the defendant violated a condition of supervised release***, except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case[.]

18 U.S.C.A. § 3583(e)(3) (emphasis added).

Citations to additional authority

FED. R. CRIM. P. 11, 32.

18 U.S.C.S. § 13 (Law Co-op. Supp. 2003).
18 U.S.C.S. § 3563(a) (Law Co-op. 2001).

28 U.S.C. § 3002 (2000).

31 U.S.C. §§ 321(d), 5101, 5102, 5103 (2000).
42 U.S.C.A. § 1320b-9(k) (West 2003).

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public-Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

Trial Court Jurisdiction

If jurisdiction exists, 18 U.S.C. § 7.

Procedural point—Revocation is a *civil* proceeding

Parole revocation, *Morrissey*, 408 U.S. at 481, and probation revocation, *Gagnon*, have ***always*** been known as *civil* proceedings. "Supervised release" follows the very same standards. *Frazier* (extending analogy to supervised release). FED. R. CRIM. P. 32.1(a)(2) (Advisory Committee Notes); FED. R. EVID. 1101(d)(3) (federal rules of evidence inapplicable to proceedings granting or revoking probation); *Vitek*, 415 U.S. at 488; *Copeland*, 20 F.3d at 414. *Accord Copley*, 978 F.2d at 831; *Barnes*, 184 F.3d at 454-55 and n.7. For purposes of the "Confrontation Clause," the Fifth Circuit cite *Copeland*, applying the understanding that supervised release revocation is *civil*, not criminal. *McCormick*, 54 F.3d at 221 n.20.

Revocation of "supervised release" is a ***civil*** proceeding. Therefore, the rules of ***civil*** procedure apply from the threshold.

BOP released Arnold to the community

Arnold gave written notice that he would act upon the release papers, which released him to the community.

Non-criminal basis for revocation

The Georgia probation officer, GRIZZARD, instructed Arnold to attend a meeting that she set up in Florida with probation authorities there. Arnold, having been released to the community, did not attend.

The motion to revoke and the arrest "order"—in a *GEORGIA* case that never existed.

Per the popular theory, it's a *sua sponte* motion. Thus, SCHLESINGER filed and granted a motion to revoke, and ordered Arnold's arrest, even though no such case existed in MIDDLE DISTRICT OF ***GEORGIA***. GRIZZARD, a